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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,346	08/23/2006	Jeffrey P. Reistroffer		9676

7590 10/18/2011  
JEFFREY P. REISTROFFER  
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EXAMINER
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JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

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10/18/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/597,346	<b>Applicant(s)</b> REISTROFFER, JEFFREY P.	
	<b>Examiner</b> STEPHEN M. JOHNSON	<b>Art Unit</b> 3641	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 1,2,7,11-18,26,35,36,44,47,49 and 76 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☒ Claim(s) 76 is/are allowed.
- 7) ☒ Claim(s) 1,2,7,11-15,35,36 and 44 is/are rejected.
- 8) ☒ Claim(s) 16-18,26,47 and 49 is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

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1. This Office action is in response to the RCE as filed on 09/23/2011. Claims 1-2, 7, 11-18, 26, 35-36, 44, 47, 49, and 76 remain active in this application and an action on these claims follows. Claims 3-6, 8-10, 19-25, 27-34, 37-43, 45-46, 48, and 50-75 have been cancelled.

2. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, it is not understood as to which of the previously claimed articles “waxes”, “tars”, “natural resins”, etc. listed in claim 2 is intended to be further limited by the claim limitation of “conifer tree resins” as listed in claim 7.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 11-15, 35-36, and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Posson (4,220,087).

Posson (087) discloses a prolonged burning incendiary strand comprising:

- a) a stand body (cord) of indeterminate length; 17
- b) at least one solid fuel component; 18 or 23 or 26 or 42 or 68;  
col. 2, lines 11-21
- c) the fuel component being able to undergo self-sustained inherent  
ignition in the presence of oxygen;
- d) flames emitted from the exterior surface of the strand; abstract, col. 4, lines 13-21

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e) axial ignition means for initiating combustion of the fuel component; and 19 or 23; col. 4, lines 1-6

f) flaming composition from ten seconds to five minutes. col. 4, lines 6-12

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Posson (4,220,087) in view of Richardson et al. (3,712,222).

Posson (087) applies as previously recited. However, undisclosed is a fuel material that is a thermoplastic polymer. Richardson et al. (222) teach a fuel material that is a thermoplastic polymer (col. 4, lines 62-68). Applicant is substituting one fuel material for another in an analogous art setting as explicitly encouraged by the secondary reference (see col. 4, lines 62-68 of Richardson et al.) with expected or predictable results (see KSR Int'l Co. v. Teleflex, Inc., 550 U.S. 398, 406 (2007)). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Richardson et al. to the Posson incendiary strand and have an incendiary strand with a different type of fuel component.

7. Claims 16-18, 26, 47, and 49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claim 76 is allowed.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877 and whose e-mail address is ([Stephen.Johnson@uspto.gov](mailto:Stephen.Johnson@uspto.gov)). The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.

/Stephen M. Johnson/  
Primary Examiner, Art Unit 3641

SMJ  
October 11, 2011